

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK BAKER,

Plaintiff,

v.

U.S. FOOD AND DRUG
ADMINISTRATION, et al.,

Defendants.

No. 2:24-cv-0278 DC SCR (PS)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is proceeding pro se in this matter, which is referred to the undersigned pursuant to Local Rule 302(c)(21). Before the court are Defendants' Motion to Dismiss under Rule 12(b)(6) ("Defendants' MTD") and Plaintiff's Motion to Dismiss under Rule 41(a)(2) ("Plaintiff's MTD"). ECF Nos. 13, 22.

Plaintiff filed this action on January 22, 2024, challenging the Food and Drug Administration's decision not to regulate radiation from LED light bulbs. ECF No. 1. On July 29, 2024, Defendants filed their MTD. ECF No. 13. On September 19, 2024, once briefing on Defendants' MTD was complete, the court heard that motion and took it under submission. *See* ECF Nos. 13, 15, 17, 20. A few days later, on September 23, 2024, Plaintiff filed a new case also concerning the regulation of LED lights. The new case is, for the most part, brought against the same Defendants in this case. It adds four new Defendants. *See* Case No. 2:24-cv-2558 DC

1 SCR.¹ Plaintiff then filed a motion to voluntarily dismiss this case under Rule 41(a)(2) on
2 September 26, 2024. ECF No. 22. The two cases have been ordered related and reassigned to the
3 undersigned and District Judge Coggins. ECF No. 24.

4 Defendants did not file an opposition to Plaintiff's MTD. Defendants therefore have not
5 shown that they will suffer prejudice from dismissal, and the undersigned recommends Plaintiff's
6 MTD be granted. *See Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001) ("A district court
7 should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show
8 that it will suffer some plain legal prejudice as a result."). In light of this recommendation, the
9 undersigned further recommends that Defendants' MTD be denied as moot.

10 IT IS HEREBY ORDERED that the hearing on Plaintiff's Motion for Voluntary
11 Dismissal (ECF No. 22), set for November 7, 2024, be VACATED.

12 IT IS HEREBY RECOMMENDED that:

- 13 1. Plaintiff's Motion for Voluntary Dismissal (ECF No. 22) be GRANTED; and
14 2. Defendants' Motion to Dismiss (ECF No. 13) be DENIED as moot.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
17 days after being served with these findings and recommendations, either party may file written
18 objections with the court. Such document should be captioned "Objections to Magistrate Judge's
19 Findings and Recommendations." Local Rule 304(d). The parties are advised that failure to file

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24 ¹ The overlapping defendants are the U.S. Food and Drug Administration (FDA), Robert Califf,
25 the Commissioner of the FDA, U.S. Health And Human Services (HHS), Xavier Becerra,
26 Secretary of HHS. *Compare* Case No. 2:24-cv-0278 DC SCR *with* Case No. 2:24-cv-2558 DC
27 SCR. In the subsequent suit, the former Director of the Center for Devices and Radiological
28 Health at the FDA was replaced with the acting director, and Plaintiff added the following
defendants: U.S. National Highway Traffic Safety Administration (NHTSA), Sophie Shulman,
Deputy Administrator of NHTSA, U.S. Department of Transportation, and Pete Buttigieg,
Secretary of Department of Transportation. *Id.*

1 objections within the specified time may waive the right to appeal the District Court's order.

2 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: October 31, 2024

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6 SEAN C. RIORDAN
7 UNITED STATES MAGISTRATE JUDGE
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